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Remarks

Preliminary Matters

Applicant thanks the Examiner for entering the Preliminary Amendment filed on July 21, 2003. Applicant also thanks the Examiner for withdrawing the original Lack of Unity finding, which was mailed on September 3, 2003.

Response to Office Action (Lack of Unity of Invention)

The Office action contends that the present application includes claims directed to seven inventions (Groups I - VII) that do not relate to a single inventive concept, because “they lack the same or corresponding special technical features.” In the words of the Office action, “the claimed invention fails to make a contribution over the prior art,” citing the ISA Chapter I search report.

As detailed further below, Applicant traverses the lack of unity of invention and requests that the Examiner withdraw or modify the Requirement. In the event the Requirement is maintained, *Applicant provisionally elects Examiner’s Group I*, which includes at least claims 35-45, and 69.

MPEP § 1893.03(d) provides that, when making a lack of unity of invention requirement, the Examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (*i.e.*, why there is no single general inventive concept) specifically describing the unique special technical feature in each group.

In reaching the conclusion that the claims fail to make a contribution over the prior art, the Office relied on the ISA Chapter I search report, which alleges that the subject-matter of Claims 1-34 is not novel. However, Claims 1-34 were canceled by the Preliminary Amendment filed on July 21, 2003, and Claims 35-86 are now the claims pending in the Office.

Even if the allegation in the ISA Chapter I search report pertaining to the novelty of Claims 1-34 was sound (and Applicant makes no such admission), Applicant asserts that the

subject-matter of Claims 35-86 is novel over the prior art. In the Preliminary Amendment, claim 35 was amended as follows:

35. An isolated nucleic acid comprising a transcriptional unit for an immunogenic flavivirus antigen, wherein the transcriptional unit directs a host cell, after being incorporated therein, to synthesize the immunogenic antigen, and wherein the transcriptional unit comprises a prM signal sequence and a Kozak ribosomal binding sequence located in a position that is effective for ribosome binding.

This claim, as currently pending, includes at least one limitation that is not present in the art cited in the ISA Chapter I search report. In particular, none of the cited references teach or imply the inclusion of “*a prM signal sequence and a Kozak ribosomal binding sequence located in a position that is effective for ribosome binding*” in a transcriptional unit as encompassed by claim 35. Since all of the pending claims depend either directly or indirectly from claim 35, and thereby incorporate all limitations of that independent claim, **all** of the pending claims include at least one limitation that makes the claimed subject matter novel over the cited references.

Since the current Office action does not explain why the **pending** claims fail to make a contribution over the cited prior art, the lack of unity of invention requirement is improper under MPEP § 1893.03(d). Applicant respectfully requests that the requirement be withdrawn, and examination be carried out on all of the pending claims.

Conclusion

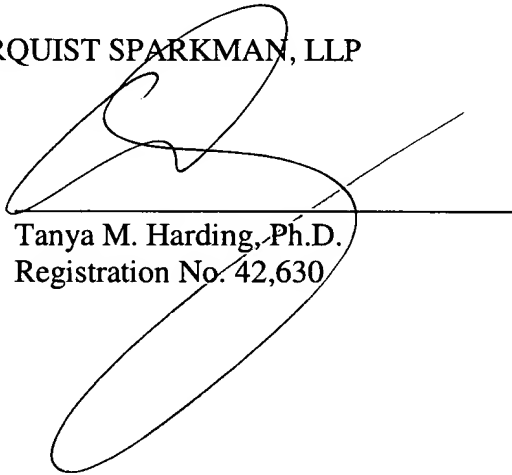
In light of the above arguments and for the reasons stated above, Applicant requests that the lack of unity of invention requirement be withdrawn. However, in the event the requirement is maintained, *Applicant has provisionally elected Group I* with traverse.

Examiner Parkin is invited to telephone the undersigned if any questions remain concerning the lack of unity of invention requirement. Otherwise, the present application is ready for substantive examination, and such action is respectfully requested.

Respectfully submitted,

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